

The Honorable _____



OCT 03 2016

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

16 CV-01580 *PAJ*

DAVID V. MYERS and SHIVA Y. STEIN,
derivatively on behalf of STARBUCKS
CORPORATION,

Plaintiffs,

v.

TROY ALSTEAD, MARY N. DILLON,
ROBERT M. GATES, MELLODY HOBSON,
KEVIN R. JOHNSON, SCOTT MAW,
JOSHUA COOPER RAMO, HOWARD
SCHULTZ, JAMES G. SHENNAN, JR.,
CLARA SHIH, JAVIER G. TERUEL,
MYRON E. ULLMAN, III, CRAIG E.
WEATHERUP,

Defendants,

and

STARBUCKS CORPORATION,

Nominal Defendant.

**PLAINTIFFS' MOTION TO FILE
DOCUMENTS UNDER SEAL**

**Note on Motion Calendar:
October 14, 2016**

I. INTRODUCTION

PLAINTIFFS' MOTION TO FILE
DOCUMENTS UNDER SEAL - 1

BADGLEY MULLINS TURNER PLLC
1929 Ballinger Way NE, Suite 200
Seattle, WA 98155
TEL 206.621.6566
FAX 206.621.9686

1 Pursuant to LCR 5(g), Plaintiffs respectfully request that the Court grant them permission
2 to file under seal the Complaint by Plaintiffs David M. Myers ("Mr. Myers") and Shiva Y. Stein
3 ("Ms. Stein")(collectively, "Plaintiffs").

4 II. FACTUAL BACKGROUND

5 Plaintiffs are filing the instant motion pursuant to a Confidentiality and Non-Disclosure
6 Agreement ("NDA") entered into by and between nominal defendant Starbucks Corporation
7 ("Starbucks"), on the one hand, and Ms. Stein and her counsel, on the other hand, dated October
8 1, 2015. Declaration of Gustavo Bruckner ("Bruckner Decl."), ¶ 2; **Ex. A.** The parties entered
9 into the NDA to allow Starbucks to designate certain documents it was producing to Ms. Stein,
10 pursuant to a books and records demand issued by her under RCW 23B.16.020, as confidential.
11 Mr. Myers subsequently signed onto the NDA on or about August 24, 2016. Bruckner Decl., ¶ 3;
12 **Ex. B.** Plaintiffs bring this motion so that the Court can determine whether sealing the unredacted
13 Complaint is appropriate in this matter. Bruckner Decl. ¶ 5; **Ex. C.** A copy of the redacted
14 complaint is attached as well. *Id.*; **Ex. D.**

15 Prior to filing this motion, Plaintiffs' counsel contacted counsel for defendants by
16 telephone and email to meet and confer regarding the confidentiality of certain documents,
17 pursuant to LCR 5(g)(3)(A). Bruckner Decl., ¶ 6. The NDA states in pertinent part:

18 "In the event that Stockholder determines she wishes to use Confidential
19 Inspection Material in any complaint or other pleading or court document,
20 unless otherwise ordered by a court of competent jurisdiction, a) the
21 document or pleading (or any portion of a document or pleading) shall be
22 initially filed under seal subject to a confidentiality order consistent with
23 the terms of this Agreement restricting access to such Confidential
24 Inspection Material to the court in which such action is filed, court
25 personnel, those persons to whom Confidential Inspection Material may be
26 disclosed pursuant to Paragraph 4, and the Company and its agents and
representatives."

Bruckner Decl., ¶ 3; **Ex. B.**

1 Certain information was learned and documents obtained throughout the inspection
2 process that are essential to Plaintiffs' claims against defendants for breach of fiduciary duties.
3 Bruckner Decl., ¶ 7. The parties met and conferred on the appropriateness of redacting certain
4 portions of and documents attached to the complaint. Bruckner Decl., ¶ 6.

5 III. ARGUMENT

6 There is a strong presumption that the public is entitled to access court records. LCR
7 5(g). Parties must explore all alternatives to filing a document under seal. *See* LCR 5(g)(1). If a
8 party seeks to file a document under seal because another party has designated it as confidential,
9 the filing party and the designating party must "meet and confer to determine whether the
10 designating party will withdraw the confidential designation or will agree to redact the document
11 so that sealing is unnecessary." LCR 5(g)(3)(A).

12 A party may file a document under seal only if a motion to seal is simultaneously filed
13 with the Court. LCR 5(g)(2)(B). Such a motion must: (1) certify that the parties have
14 conferred; and (2) state the applicable legal standard and reasons for sealing the document.
15 LCR 5(g)(3). However, where parties have entered into a litigation agreement or stipulated
16 protective order governing the exchange in discovery of documents that a party deems
17 confidential, a party wishing to file a confidential document it obtained from another party in
18 discovery may file a motion to seal but need not set forth the applicable legal standard and
19 reasons for sealing the documents. LCR 5(g)(3). Instead, the party who designated the
20 document confidential bears the burden of demonstrating in its response to a motion to seal
21 that sealing is appropriate. *Id.*

22 Here, the parties conferred by telephone and email regarding the confidential
23 designation of those certain documents produced by Starbucks which Plaintiff now seeks to
24 attach and file with their complaint as essential components of their claims against defendants.
25 As of the filing deadline for this motion, defendants continue to believe that public disclosure of
26

1 the redacted portions of the complaint and exhibits thereto would cause Starbucks competitive
2 harm. At a later date, Defendants will file a response to this motion setting out the applicable
3 legal standard and the reasons for keeping the redacted materials under seal. *See* LCR 5(g)(3).
4 If the Court finds defendants meet their burden, Plaintiffs should be allowed to file the
5 unredacted Complaint under seal. If the Court finds defendants do not meet their burden, then
6 Plaintiffs should be allowed to file the unredacted Complaint in open court.

7 IV. CERTIFICATION

8 In accordance with LCR 5(g)(3)(A), Plaintiffs hereby certify that the parties met and
9 conferred by email and telephone on or about September 16, 2016, regarding Starbucks'
10 confidential designation of the documents and information included and redacted in the
11 Complaint.

12 V. CONCLUSION

13 For these reasons, Plaintiffs respectfully request the Court to allow them either to file the
14 document attached as **Exhibit C** to the Declaration of Gustavo F. Bruckner under seal.

15 VI. PROPOSED ORDER

16 A proposed order is submitted herewith.

17
18 RESPECTFULLY SUBMITTED AND DATED this 30th day of September, 2016.

19 BADGLEY MULLINS TURNER, PLLC

20 s/Duncan C. Turner

21 Duncan C. Turner, WSBA No. 20597
22 19929 Ballinger Way NE, Suite 200
23 Seattle, Washington 98155
24 Telephone: 206-621-6566
25 Facsimile: 206-621-9686
26 Email: dtturner@badgleyturner.com
Attorney for Plaintiff